

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF DEPARTMENT OF)
INSURANCE, FINANCIAL INSTITUTIONS)
AND PROFESSIONAL REGISTRATION,)
)
Petitioner,)
)
vs.)
)
MICHAEL P. IPPOLITO and)
THE BENEFIT PARTNERSHIP, INC.,)
)
Respondents.)

No. 13-0390 DI

DECISION

The nonresident insurance producer license of Michael P. Ippolito is subject to discipline because Ippolito's insurance licenses were revoked in other states, he failed to inform the Director ("the Director") of the Department of Insurance, Financial Institutions and Professional Registration ("the Department") of those disciplinary actions, he violated the Director's subpoenas and the insurance laws of other states, and he used fraudulent and dishonest practices and demonstrated untrustworthiness and financial irresponsibility in the conduct of business. The nonresident insurance entity license of The Benefit Partnership, Inc. ("TBP") is subject to discipline because Ippolito's violations (and those of his sub-brokers) were known by Ippolito, the sole officer of TBP, but were neither reported to the Director nor was any corrective action taken with regard to those violations.

Procedure

On March 4, 2013, the Director filed a complaint asking us to find grounds to discipline the licenses of Ippolito and TBP. Ippolito and TBP were served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail on May 10, 2013. Neither Ippolito nor TBP filed an answer.

On June 18, 2013, the Director propounded his first request for admissions upon Ippolito, who did not respond to the request. Under Supreme Court Rule 59.01, made applicable to this Commission by 1 CSR 15-3.420,¹ the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.² Such a deemed admission can establish any fact, or “application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law.”³ That rule applies to all parties, including those acting *pro se*.⁴ Section 536.073⁵ and our Regulation 1 CSR 15-3.420(1) apply that rule to this case.

On July 25, 2013, the Director filed a motion for summary decision, accompanied by a statement of uncontested material facts (which included certified copies of proceedings conducted by the insurance regulatory authorities of other states, as well as copies of correspondence) and suggestions in support of the motion. Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the Director establishes facts that Ippolito and TBP do not dispute and entitle the Director to a favorable decision. We gave Ippolito and TBP until August 8, 2013, to respond to the motion, but they did not respond. Therefore, the following facts are undisputed.

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

²*Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

³*Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App., W.D. 1986).

⁴*Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

⁵RSMo 2000. Statutory references are to RSMo Supp. 2012 unless otherwise indicated.

Findings of Fact

1. Ippolito was licensed by the Department as a nonresident insurance producer for the accident and health lines of authority effective June 9, 2009. This license expired on June 9, 2013, when it was not renewed.

2. On April 21, 2009, Ippolito, as incorporator, filed articles of organization for TBP with the Secretary of the Commonwealth of Massachusetts (“the Secretary”). The articles named Ippolito as TBP’s registered agent for service of process. Those articles showed Ippolito to be the president, treasurer, and secretary of TBP.

3. TBP was licensed by the Department as a nonresident business entity insurance producer on August 10, 2009. This license expired on August 10, 2011, when it was not renewed.

4. On December 20, 2011, TBP filed articles of voluntary dissolution with the Secretary. Ippolito was shown on that filing as the president, treasurer, and secretary of TBP.

Ippolito’s Fraudulent Scheme

5. Prior to May 2011, Ippolito received authorization from Unum Life Insurance Company of America (“Unum”), ReliaStar Life Insurance Company (“ReliaStar”), and Transamerica Life Insurance Company (“Transamerica”) to solicit life insurance business on their behalf.

6. Between May and October 2011, Ippolito submitted 696 applications for life insurance to Unum, 239 applications to ReliaStar, and an unstated number of applications to Transamerica. These applications contained various misrepresentations, including the employment status of the applicants and that a licensed agent had been present at the time of enrollments. In some cases, the application was not completed or signed by the person shown as the applicant. Ippolito and his sub-brokers had applicants misrepresent the nature of their

employment, and in some cases, their identities, on their applications, and “coached” the applicants in how to apply for insurance or what to say during telephone interviews.

7. All of the policies were canceled for nonpayment, usually for failure to make the first premium payment.

8. Ippolito received at least \$2,650,000 in commissions for the policies in question.

License Revocations by Other States and
Failure to Report them to the Department

9. On November 29, 2011, the Commissioner of Insurance of the State of Kansas revoked Ippolito’s Kansas nonresident insurance agent’s license. The grounds for revocation included Ippolito’s practice of having forged signatures on applications for insurance and using a dishonest or fraudulent practice in the course of doing insurance business.

10. On February 7, 2012, the Director of the Idaho Department of Insurance revoked Ippolito’s non-resident insurance producer license. The grounds for revocation included Ippolito’s failure to notify the Idaho Department of Insurance within 30 days of an administrative action being taken against his Kansas insurance producer license, in violation of Idaho Code § 41-1021(1); engaging in fraudulent, coercive or dishonest practices; demonstrating incompetence, untrustworthiness or financial irresponsibility; or being a source of injury and loss to the public or others, in the conduct of business in Idaho or elsewhere, in violation of Idaho Code § 41-1016(1).

11. On March 22, 2012, all insurance licenses issued to Ippolito by the Connecticut Insurance Department were revoked by the Insurance Commissioner of Connecticut. The ground for revocation included Ippolito’s failure to notify the Connecticut Insurance Department that his Kansas producer license had been revoked, in violation of Conn. Gen. Stat. §§ 38a-771

and 38a-702o, and failure to adequately or properly respond to correspondence sent to him by the Connecticut Insurance Department, in violation of Conn. Gen. Stat. §§ 38a-16 and 38a-769.

12. On April 9, 2012, the Arkansas Insurance Commissioner revoked Ippolito's nonresident insurance producer license. The grounds for revocation included Ippolito's failure to attend an investigative conference with the Arkansas Department of Insurance, in violation of Ark. Code § 23-64-512(a)(16).

13. On April 27, 2012, the South Dakota Secretary of Labor and Regulation revoked Ippolito's nonresident insurance producer license. The grounds for revocations included Ippolito's failure to timely respond to inquiries from the South Dakota Division of Insurance, in violation of S.D. Codified Laws § 58-33-66(1).

14. On July 11, 2012, the California Insurance Commissioner revoked Ippolito's nonresident accident and health and life-only insurance agent licenses. The grounds for revocation included Ippolito's license revocations in Kansas, Idaho, Connecticut, Arkansas, and South Dakota.

15. On July 18, 2012, the Vermont Commissioner of the Department of Financial Regulation revoked Ippolito's nonresident insurance producer license. The grounds for revocation included Ippolito's license revocations in Kansas, Connecticut, Arkansas, and South Dakota.

16. On July 19, 2012, the Kentucky Commissioner of the Department of Insurance revoked Ippolito's insurance producer license. The grounds for revocation included using fraudulent, coercive, or dishonest practices; demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business in Kentucky or elsewhere, and for revocation of his insurance producer licenses by other states.

17. On August 9, 2012, the South Carolina Acting Director of Insurance revoked Ippolito's nonresident insurance producer license. The grounds for revocation included the revocation of his insurance licenses by other states and his involvement in fraudulent activity, in violation of S.C. Code §§ 38-43-130 and 38-2-10.

18. On August 16, 2012, the Texas Commissioner of Insurance revoked Ippolito's general lines-life, accident, and health insurance license. The grounds for revocation included submitting fabricated insurance applications (and thereby collecting unearned premiums) and failure to report administrative actions against his license by other states, in violation of Tex. Ins. Code §§ 81.003 and 4001.252.

19. On July 28, 2012, the Maine Department of Professional and Financial Regulation revoked Ippolito's individual insurance producer license, effective August 28, 2012. The ground for revocation was the failure to report the revocation of his insurance licenses by Kansas, Idaho, Connecticut, and South Dakota, in violation of Me. Rev. Stat. tit. 24-A, § 1420-P(1).

20. The above-stated actions by the insurance departments or commissions of Kansas, Idaho, Connecticut, Arkansas, South Dakota, California, Vermont, Kentucky, South Carolina, Texas, and Maine were final dispositions of those cases.

21. None of the above-stated actions was reported by Ippolito to the Director.

The Board's Subpoenas and Ippolito's Failure to Comply

22. The Director served subpoenas and subpoenas duces tecum on Ippolito at his home and business addresses on December 22, 2011, ordering Ippolito to appear before the Department on January 25, 2012 to answer questions concerning fraud and forgery, and his failure to respond to correspondence and telephone calls.

23. Neither Ippolito nor anyone on his behalf appeared before the Department.

TBP's sole officer knew of the violations
committed by Ippolito and the sub-brokers.

24. TBP's sole officer (Ippolito) knew of the violations he and his sub-brokers committed as set out above.

25. TBP did not report the violations to the Department and took no corrective action with regard to those violations.

Conclusions of Law

We have jurisdiction to hear the complaint.⁶ The Director has the burden of proving that Ippolito has committed an act for which the law allows discipline.⁷ The Director argues there is cause for discipline under § 375.141:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

* * *

⁶ Section 621.045.

⁷ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

3. The license of a business entity licensed as an insurance producer may be suspended, revoked, renewal refused or an application may be refused if the director finds that a violation by an individual insurance producer was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

Count I- Producer License Revoked in Other States-§ 375.141.1(9)

Section 375.141.1(9) creates cause for discipline of an insurance producer's license if the producer's license was revoked in another state. The following states revoked Ippolito's insurance licenses: Arkansas, California, Connecticut, Idaho, Kansas, Kentucky, Maine, South Carolina, Texas, and Vermont. Ippolito's license is therefore subject to discipline pursuant to § 375.141.1(9).

Count II- Violation of Missouri Insurance Laws –
§§ 375.141.1(2) and 375.141.6

Section 375.141.1(2) creates cause to discipline Ippolito's licenses if he violated any insurance laws. The Director alleges that the insurance law Ippolito violated is § 375.141.6, which provides:

An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

Ippolito did not report the revocations entered against him by the insurance departments or commissions of Arkansas, California, Connecticut, Idaho, Kansas, Kentucky, Maine, South Carolina, South Dakota, Texas, and Vermont. Those revocation orders are "administrative action[s] taken against the producer[s] in another jurisdiction." Ippolito's license is therefore subject to discipline under § 375.141.1(2) for violating § 375.141.6.

Count III- Violation of Subpoena or Order
of the Director – § 375.141.1(2)

Section 375.141.1(2) creates a cause for discipline of an insurance producer's license if the licensee violates any subpoena or order of the Director. The Department served subpoenas and subpoenas duces tecum on Ippolito at his home and business addresses on December 22, 2011, ordering Ippolito to appear before the Director on January 25, 2012 to answer questions concerning fraud and forgery, and his failure to respond to correspondence and telephone calls. Neither Ippolito nor anyone on his behalf appeared. Ippolito's license is therefore subject to discipline pursuant to § 375.141.1(2).

Count IV- Violation of Other States' Insurance Laws – § 375.141.1(2)

The Director asserts that Ippolito violated the insurance laws of Connecticut, Idaho, Arkansas, South Dakota, Maine, South Carolina, and Texas. The orders entered by each state contain findings of fact and conclusions of law showing that Ippolito committed the violations as alleged, which we set out below.

- *Connecticut*- By failing to notify the Connecticut Insurance Department that his producer license had been revoked by the Kansas Insurance Department within 30 days of such revocation, Ippolito violated Conn. Gen. Stat. §§ 38a-771 and 38a-702o. Also, by failing to adequately or properly respond to correspondence sent to him by the Connecticut Insurance Department, Ippolito violated Conn. Gen. Stat. §§ 38a-16 and 38a-769.
- *Idaho*- By failing to notify the Idaho Department of Insurance within 30 days of an administrative action being taken against his Kansas insurance producer license, Ippolito violated Idaho Code § 41-1021(1). Also, by engaging in fraudulent, coercive or dishonest practice; or demonstrating incompetence, untrustworthiness or financial irresponsibility; or being a source of injury and loss to the public or others, in the conduct of business in Idaho or elsewhere, Ippolito violated Idaho Code § 41-1016(1).
- *Arkansas*- By failing to attend an investigative conference with the Arkansas Department of Insurance, Ippolito violated Ark. Code § 23-64-512(a)(16).
- *South Dakota*- By failing to timely respond to inquiries from the South Dakota Division of Insurance, Ippolito violated S.D. Codified Laws § 58-33-66(1).
- *Maine*- By failing to report license actions taken against him by the insurance departments of Kansas, Idaho, Connecticut, Arkansas, and South Dakota, Ippolito violated Me. Rev. Stat. tit. 24-A, § 1420-P(1).
- *South Carolina*- By his involvement in fraudulent activity and by having his license revoked in another state, Ippolito violated S.C. Code §§ 38-43-130 and 38-2-10.

- *Texas*- By failing to report administrative actions taken against him by the insurance departments of Kansas, Idaho, and Arkansas, Ippolito violated Tex. Ins. Code §§ 81.003 and 4001.252.

Ippolito's license is therefore subject to discipline under § 375.141.1(2).

Count V- Using Fraudulent or Dishonest Practices, or
Demonstrating Untrustworthiness or Financial Irresponsibility
in the Conduct of Business- § 375.141.1(8)

Fraud is an intentional perversion of truth to induce another to act on it.⁸ It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.⁹ The definition of “trustworthy” is “worthy of confidence” or “dependable.”¹⁰ “Responsibility” means moral, legal, or mental accountability.¹¹ “Financial” pertains to the money or other liquid resources of a government, business, group, or individual. Therefore, “financial irresponsibility” means a lack of accountability with regard to the money or resources of oneself or another.

In this case, Ippolito, pursuant to authorizations to solicit insurance business on behalf of Unum, Transamerica, and ReliaStar, wrote enough policies to collect approximately \$2,650,000 in advanced commissions from those companies. However, the policies were fraudulently applied for and obtained, in that Ippolito and his sub-brokers had applicants misrepresent the nature of their employment, and in some cases, their identities, on their applications, and “coached” the applicants in how to apply for insurance or what to say during telephone interviews. These actions constituted an intentional perversion of truth to induce the insurance companies to part with significant sums of money, paid to Ippolito for policies written based on applications falsified through the instruction of Ippolito or the sub-brokers working for him.

⁸ *Kerwin v. Missouri Dental Bd.*, 375 S.W.3d 219, 229 (Mo. App., W.D. 2012); *Hernandez v. State Bd. of Registration for the Healing Arts*, 936 S.W.2d 894, 899 n.2 (Mo. App., W.D. 1997).

⁹ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

¹⁰ *Id.* at 1344.

¹¹ *Id.* at 1062.

Ippolito's license is therefore subject to discipline under § 375.141.1(8) for fraudulent and dishonest practices, untrustworthiness, and financial irresponsibility in the conduct of business.

Count VI- IBP's liability for acts of its agent- § 375.141.3

Section 375.141.3 creates a cause for discipline of a business entity license when the entity fails to report or take corrective action concerning a violation by an individual insurance producer and one or more of the entity's partners, officers, or managers knew or should have known of the violation. Ippolito was an officer of IBP and acted on IBP's behalf. As a partner, officer, or manager of IBP, and acting on IBP's behalf, Ippolito knew of his own violations and those of his sub-brokers as we set out above, but IBP neither reported the violations to the Director nor took corrective action. IBP's license is therefore subject to discipline under § 375.141.3.

Summary

Ippolito's nonresident insurance producer license is subject to discipline under § 375.141.1(2), (8), and (9). IBP's nonresident entity license is subject to discipline under § 375.141.3. We grant the motion for summary decision and cancel the hearing.

SO ORDERED on August 22, 2013.

/s/ Sreenivasa Rao Dandamudi

SREENIVASA RAO DANDAMUDI
Commissioner